

The CPG has highlighted to EPA issues in its dealings with NJDEP that may delay implementation of the RM 10.9 removal action. EPA does not accept all the CPG's assertions at face value, but it is important that any issues are resolved before they do substantially impact the schedule, which would reinforce the CPG's argument that a comprehensive dredging remedy cannot be implemented within a reasonable timeframe. The most critical of these are listed below.

Issue 1 - The Acceptable Use Determination (AUD) process assesses whether the end-product of a sediment treatment process is environmentally safe to use within the State for purposes such as fill or landscaping material. Because the stabilized RM 10.9 sediment will be disposed of in an out of state RCRA Subtitle C Landfill and not reused, on what basis and for what purpose would NJDEP require a AUD for sediment from RM 10.9?

Issue 2 - NJDEP has indicated it will not grant an AUD to the commercial stabilization facilities for treating the RM 10.9 sediment unless NJDEP also approves the out-of-state landfill and wastewater treatment facilities where RM 10.9 material will be sent. In the context of an EPA-lead Superfund response action, it is EPA that determines the acceptability of the off-site disposal location and this NJDEP position is questionable.

Issue 3 - The CPG provided Potential to Emit (PTE) analyses for the dredging operation to NJDEP in early January 2013. The chemical analysis of the sediment indicated that the dredging operation would not trigger any air emission regulations. Note that if NJDEP seeks to require controls or monitoring, it must make a final decision and provide its rationale as soon as possible so this issue can be resolved.

Issue 4 - The CPG provided data to support its position that detailed flood hazard modeling is not warranted for a "no net fill" project at RM 10.9. If NJDEP continues to request a flooding assessment/model to support that flood hazard is not applicable, NJDEP must provide its rationale as soon as possible.

Issue 5 - NJDEP has indicated the CPG's Water Front Development (WFD) permit application will not be approved unless the AUD application is approved. Putting aside the AUD question noted above, it is not clear under what authority these two permits are linked. The CPG will need to inform the Tidelands Commission before April 15 to appear on the May 1 meeting agenda. Failure of NJDEP to enable the CPG to go forward by that date will delay the removal.

Issue 6 - The water quality monitoring program proposed by NJDEP during the dredging operation imposes a difficult obligation on the CPG because the Passaic River does not currently meet surface water quality standards. Furthermore, NJDEP's proposed schedule would delay approval until the after approval of the Final Design Report, resulting in an unacceptable delay in the WFD process.

Issue 7 - NJDEP has requested elutriate testing/characterization of dredge sediment that is normally required for direct discharge of excess barge water to surface water. The CPG has indicated that excess barge water will be collected, containerized, tested and then disposed of at an off-site facility that has permits to treat such water; therefore, this requirement is does not appear to be relevant to the situation.